HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 6281 OF 2005

Dated September, 2006

Between:
Sri Laxmi Co-operative Housing Society Ltd.
(TSB-119), Troop Bazar, Hyderabad.

… Petitioner

And

Government of Andhra Pradesh,
represented by its Principal Secretary,
Department of Revenue, A.P.
Secretariat Buildings and others.

… Respondents.

ORAL ORDER:

This writ petition is filed by a society registered under the A.P. Co-operative Societies Act, questioning the orders of the Government dated 31.10.1987 passed in Memo No. 453/UC-II(I)/84-12, dated 31.10.1997 and communicated through Memo No.29862/UC.II(2)/01-9, dated 1.3.2005, by which, the claim of the petitioner-society for grant of exemption under Section 20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 is rejected.

The facts, in brief, necessary for disposal of the writ petition are as follows:

Respondents 5 and 6 herein were the owners and possessors of land totally admeasuring 16 acres 23 guntas and 115 sq. yards covered by Survey No. 105, 110, 113, 114, and 149/3 situated at Yousufguda village of Golconda Mandal of erstwhile Golconda Taluq in Hyderabad District. After the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act") came into force, they filed declaration

before the Competent Authority, as contemplated under the Act, and the Competent Authority, Urban Land Ceiling, Hyderabad by proceedings dated 7.5.1980 had declared the respondents as holding an extent of 66,173.51 sq. meters of excess land. They have questioned the said order by way of appeal before the appellate authority. When the appeal was pending, Government issued G.O.Ms.No.4270, dated 10.9.1980 prescribing guidelines for grant of exemption to vacant lands held by excess land holders, which was proposed to be transferred to the registered co-operative societies under Section 20(1)(a) of the Act. In view of the same, respondents 5 and 6 and the petitioner-society had entered into an agreement of sale on 19th day of December, 1980 and agreed to make necessary applications to the Government seeking exemption under Section 20(1)(a) of the Act. Thereafter, the Government issued G.O.Ms.No.136, Revenue (U.C.II) Department, dated 28.1.1981 in supersession of the earlier guidelines issued in G.O.Ms.No. 4270 dated 10.9.1980 for processing the exemption applications under Section 20(1)(a) of the Act. In terms of the agreement, the petitioner and respondents 5 and 6 had made applications to the Government seeking exemption and the said request for grant of exemption was rejected by the in Government Memorandum No.699/UC.II/81-7, dated 10.2.1983. Questioning the said order of rejection, the petitioner herein earlier filed Writ Petition No. 2658 of 1984. A Division Bench of this court by order dated 5th April, 1989, following the decision of this Court in **Katya Co-operative House Building Society Ltd. v. Government of A.P.**[1] directed the Government to consider the application filed by the society on merits in terms of G.O.Ms.No.4270 dated 10.9.1980, as modified by G.O.Ms.No.136, dated 28.1.1981. In **Katya Cooperative House Building Society Ltd. v. Government of A.P. (1 supra),** a

Division Bench of this Court while setting aside the impugned order therein to the effect that all requests for exemption from the land owners shall be rejected under Section 20(1)(a) of the Act and the land will be taken by the Government under the Act, held that the State Government cannot pass an order of blanket refusal in all cases without exercising the discretionary powers vested in it in respect of each individual case.

But, however, when the petitioner-society on the premise that the earlier application was still pending consideration, filed writ petition and also representation dated 6.1.2005, the Government issued Memo No.29862/UC.II(2)/01-9, dated 1.3.2005 intimating the petitioner-society that the request of the landholders to exempt the land for alienation to the society was already rejected in Government Memo. No.453/UC.II(1)/84-12, dated 31.10.1997 after hearing both parties. After issuance of the Memo dated 1.3.2005, the petitioner-society filed the present writ petition questioning the order of rejection vide Memo No.453/UC.II(1)/84-12, dated 31.10.1997 and the communication of the said rejection in Memo No.29862/UC.II(2)/01-9, dated 1.3.2005.

In the present writ petition, the main ground of challenge of the impugned orders is that while rejecting the claim of the petitioner and respondents 5 and 6 for grant of exemption, no reasons have been recorded, much less, the valid reasons, and, therefore, the impugned orders of rejection are contrary to the orders earlier passed by this Court in Writ Petition No. 2658 of 1984 on 5.4.1989.

No counter-affidavit has been filed by the Government. However, respondents 5 and 6 have filed their counter-affidavit stating that the petitioner-society is merely an agreement-holder and cannot question the order of rejection, when the rejection order passed by the Government rejecting the claim for grant of exemption has become final against the owners. It is stated that if any rights are accrued to the

petitioner-society under the agreement, in view of the rejection for grant of exemption under Section 20(1)(a) of the Act, they stood cancelled.

Heard Shri M.Chandrasekhar Rao, learned counsel for the petitioner-society, Government Pleader for Revenue, for the official respondents, and, Shri C.R.Pratap Reddy, learned counsel for respondents 5 and 6.

It is submitted by Shri Chandrasekhar Rao, learned counsel appearing for the petitioner-society that in view of the guidelines issued by the Government, the petitioner-society had entered into an agreement for purchase of lands with the landholders and when the applications made earlier were rejected by the Government without considering the same in proper perspective and without assigning any reasons, the petitioner-society filed writ petition No.2658 of 1984 and a Division Bench of this Court by order dated 5th April, 1989, following the judgment in **Katya Cooperative House Building Society Ltd. v. Government of A.P. (1 supra),** directed the Government to consider the application filed by the society on merits. It is submitted by the learned counsel for the petitioner that in spite of such a direction, the impugned orders have been passed without giving any reasons, whatsoever, for rejection of the request for grant of exemption, and despite the fact that the Competent Authority under the Act has recommended for grant of exemption, and, therefore, the same are in violation of the orders passed in Writ Petition No. 2658 of 1984. The first respondent-Government, which is exercising the quasi-judicial power, is under obligation to record its reasons for rejection. In that view of the matter, the impugned orders are illegal and arbitrary. In support of his submissions, learned counsel for the petitioner-society relied on the judgments of the Supreme Court in **A.K.Kraipak v.**

Union of India[2] and **T.R.Tandur v. Union of India**[3]**.**

Though counter affidavit has not been filed by the Government, but, it is submitted by the learned Government Pleader appearing for the official respondents that the exemption is not a matter of right and is always open for the respondent-Government to consider the requirement of land for Government. In that view of the matter, it is always open to reject the claim for exemption. It is further submitted that having regard to the power conferred under Section 20 of the Act, no detailed reasons need be indicated in the order, inasmuch as decision to reject the request for exemption was taken having regard to the requirement of the said land for government purposes.

Shri C.R.Pratap Reddy, learned counsel appearing for respondents 5 and 6 submitted that the application under Section 20 of the Act can be only at the instance of the owner of the land, who owns excess land than the retainable area under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and when the application was made jointly by the petitioner-society and respondents 5 and 6 and the same was rejected and became final against the owners, it is not open for the petitioners to question the rejection orders independent of the claim of the owners. It is submitted that under Section 20 of the Act, exemption can be granted only to the extent of excess land held by the landholders and the orders passed by the government have become final so far as the landholders are concerned, and, based on the rights alleged to have been accrued by the petitioner-society, it cannot question the orders passed by the Government without there being landholders, and, if any rights are accrued under the agreement, the petitioner-society, at the most, can approach the Civil Court for remedy, and, in fact, such a course has already been adopted by the petitioner-society, as the suit in O.S.No.

118 of 2003 has already been filed by the petitioner-society for enforcement of its rights under the agreement. In that view of the matter, the petitioner-society cannot question the impugned order of rejection when the adjudication of its rights is pending before the competent civil court.

In the aforesaid scenario, it is to be seen that when, initially, applications were made to the Government, they were in accordance with the guidelines issued in G.O.Ms.No.4270 dated 10.9.1980. But, subsequently, Government issued guidelines in G.O.Ms.No.136, dated 28th January, 1981 in supersession of the earlier guidelines and they are only the guidelines for processing the applications under Section 20(1)(a) of the Act. The application made by the petitioner-society after entering into agreement was rejected, aggrieved by which, the petitioner-society filed Writ Petition No. 2658 of 1984, which was disposed of by a Division Bench of this Court on 5.4.1989 with a direction to consider the application on merits, as held by a Division Bench of this Court in **Katya Cooperative House Building Society Ltd. v. Government of A.P. (1 supra),** wherein it was held thus:

"Section 20 confers a power coupled with a duty on the part of the State Government and it has to be exercised by the State Government in respect of each case applying its mind as to the purpose for which the land is proposed to be used and such other relevant factors as the circumstances of the case may require. The Government in such cases have to examine whether the house building cooperative society and the land-holders have complied with the conditions laid down by the Government of India and dispose of the application for exemption after proper enquiry in accordance with the directions of the Union Government. The impugned order of the State Government that all requests for exemption from the land owners shall be rejected under Section 20(1)(a) of the Act and the land will be taken by the Government under the provisions of the Act is contrary to the provisions of Section 20(1) of the Act and the directions of the Union Government and is liable to be quashed and cannot be upheld. This Court, however, would decline to grant the discretionary relief under Art.226 of the Constitution to an applicant if there has been unreasonable delay in filing the application for exemption under Section 20 of the Act, after the notification under Section 10(5) of the Act."

In **Katya Cooperative House Building Society Ltd. v. Government of A.P. (1 supra),** when all the applications for grant of exemption were rejected, it was held that there was a duty under Section 20 of the Act on the part of the Government to examine each case by applying its mind and taking into the relevant factors and pass orders. Following the said decision, this court in Writ Petition No. 2658 of 1984 directed to consider the application of the petitioner-society on its own merits. Thereafter, in fact, the Government rejected the claim for grant of exemption in the year 1997 itself vide Memo No.453/UC-II(1)/84-12, dated 31.10.1997. When further representations were submitted for processing the application after 31.10.1997, and writ petition was filed on the premise that the application for exemption was pending consideration and directions were given, the consequential communication was sent to the petitioner-society intimating that the claim was already rejected by order dated 31.10.1997. In view of the orders dated 31.10.1997 rejecting the grant of exemption, it cannot be said that the said orders are in violation of the orders issued by this court.

Though it is submitted by the learned counsel for the petitioner, Shri Chandrashekar Rao that the rejection is contrary to the earlier orders passed by this court, but, as much as after considering the claim of the petitioner and respondents 5 and 6 for grant of exemption, the same was rejected, the contention of the learned counsel for the petitioner that the orders are passed contrary to earlier directions cannot be accepted. Even the contention of the learned counsel for the petitioner that when the Competent Authority has recommended for grant of exemption, Government ought not to have rejected the same, has no legs to stand inasmuch, it is the Government which has to grant exemption under Section 20(1)(a) of the Act and it is not obligated to merely act upon the recommendation made to it.

Coming to the contention of the learned counsel for the petitioner-society that no reasons have been recorded while rejecting the request for grant of exemption, it is to be noticed that Section 20 of the Act empowers the government to examine the relevant factors necessary and expedient in the public interest before considering the application for grant of exemption, and, merely because applications are filed by entering into agreement by the petitioner-society with the land-holders, it is not an automatic act to grant the exemption sought for. Moreover, the power of exemption conferred under Section 20(1)(a) of the Act is only discretionary power of the Government, namely, subject to examination of the applications having regard to involvement of public interest in the matter. The question as to whether the reasons have to be communicated for rejection of exemption fell for consideration before a learned Single Judge of this court in **Sri Sarvaraya Sugars Limited, Chelluru v. Government A.P.** [4], wherein, after considering the matter elaborately, it was categorically held that that there is no obligation on the part of the Government to indicate the reasons. The relevant paragraphs from the said judgment read thus:

"10. As observed by the Supreme Court in E.G.Nambudiri's case, in the system of governmental functioning where before passing an order the matter is generally considered at various levels, the reasons and opinions contained in the file at various levels would be sufficient compliance with a rule that every executive action must be supported by reasons to warrant an inference that an application was dealt with in a fair and proper manner. Applying this test, I am satisfied that the impugned order is well supported by reasons and it cannot be rejected as without reasons.

11. Needless to point out that under Section 20(1)(a) of tile Act an applicant is not entitled to know the reasons for rejection and there is no obligation on the part of the first respondent to communicate reasons. Even otherwise, after perusing the impugned order, I am satisfied that the same discloses sufficient reasons when the Government said that they see no reason to comply with the request to grant exemption under Section 20(1)(a) of the Act. Be it noted that the provisions under the

Act, as held in Bhim Singhji v. Union of India, AIR 1981 SC 234, itself contain sufficient guidelines for granting exemption and the same would be sufficient reason."

That apart, though counter affidavit is not filed by the Government, but, the Government Pleader produced the relevant record before this court. I have perused the said record and it discloses that there was a proposal to utilize this land for government purposes, and, in that view of the matter, exemption was rejected. The record reveals sufficient reasons for rejection of the exemption. Therefore, I am in full agreement with the view taken by the learned Single Judge in **Sri Sarvaraya Sugars Limited, Chelluru v. Government A.P. (4 supra)** and the contention of the learned counsel for the petitioner-society is not sustainable.

On the other hand, the decisions relied on by the learned counsel for the petitioner in **A.K.Kraipak v. Union of India (2 supra)** and **T.R.Tandur v. Union of India (3 supra)** are not applicable to the case on hand having regard to the facts in this case. In the instant case, the order of rejection has become final so far as the landholders are concerned and merely because the guidelines indicate making application jointly by the petitioner-society along with the owners, and, when the application made jointly was rejected, petitioner-society sans the owners cannot question the same solely under the guise of certain rights having been accrued to it under the agreement. For the rights alleged to have been accrued under the agreement, the petitioner-society has already approached the competent Civil Court by filing O.S.No.118 of 2003 for the following reliefs:

" It is therefore prayed that the Honourable Court may be pleased to pass a judgment and decree in favour of the plaintiff and against the defendants:

a) directing the Defendants to strictly abide by the terms and conditions of the agreement dated 09.12.1980 and support the applications filed by the plaintiff-society before the Government and other authorities for grant of exemption or regularizing the Plaint Schedule Property as per the GOs issued by the Government of A.P. from time to time including latest

G.O.Ms.No.455, dated 29.7.2002.

b) directing the Defendants and persons claiming through them to execute and register a Sale Deed under and in pursuance of the Agreement dated 09.12.1980 in respect of the Suit Schedule Property being 66,173 square meters of land in Sy.Nos. 105, 110, 113, 114, 149/3, situated at Yousufguda, Hyderabad, after complying the legal formalities as mentioned in the Agreement.

c) A permanent injunction be granted restraining the Defendants, their agents, servants, attorneys, executors, administrators, or any person or persons claiming through them, from encumbering the Suit Schedule Property either by way of Sale, Lease, Gift, Donation, Mortgage, or development, or changing the nature of the Plaint Schedule Property detailed hereunder in any manner whatsoever till the conclusion of specific performance proceedings.

d) Costs of the suit be awarded"

Therefore, while it is open for the petitioner to seek enforcement of their rights, if any, under the Agreement of Sale in the civil suit, which is already filed, but, it cannot, independent of the owners, who are the excess land holders and against whom the orders of rejection for grant of exemption under Section 20(1)(a) of the Act have become final, question the orders of rejection. It is relevant to note that under Section 20(1)(a) of the Act, the land, which is in excess of the ceiling limits, is to be exempted from Chapter III of the Act. Therefore, when the rejection has become final against the excess landholders, the petitioner-society cannot question the same.

For the aforesaid reasons, there is no merit in the writ petition, and, the same is accordingly dismissed. No costs.

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--9—2006 **(R.SUBHASH REDDY, J.)**

VR.

[1] 1984 II APLJ 158

[2] AIR 1970 SC 150

[3] AIR 1996 SC 1643

[4] 2003 (5) ALD 347